80-306

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No.

JOHN W. AND MARY C. COLEBANK,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOHN W. COLEBANK,
5865 Pebble Beach Ave.,
Memphis, Tennessee 38118,
Petitioning pro-se.

The Daily Record Co., Baltimore, MD 21202

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Inasmuch as United States Court of Appeals for District of Columbia Circuit has filed on December 17, 1979 such a highly questionable and inconvincible judgment (Appendix A) as to require that their own official orders be stamped "Not To Be Published" and followed same with a series of three contradictory and equally questionable court orders—

(specifically, one on January 15, 1980 (Appendix D) followed by two Court Orders on January 28, 1980 (Appendix E and F) *contradicting* the Court Order filed January 15, 1980.

We

John W. and Mary C. Colebank are *forced* to petition the Supreme Court of the United States for a Writ of Certiorari to review the judgment and subsequent court orders of the United States Court of Appeals for the District of Columbia Circuit entered in this case as detailed immediately above.

JURISDICTION

Pursuant To Rule 19 (Rules of Supreme Court):

Considerations governing review on certiorari:

(1) A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor.

We Feel

(b) Where Court of Appeals has so far departed from accepted and usual course of judicial proceedings or has so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

Pursuant to Rule 21 (Rules of Supreme Court)

(1) A party intending to file a petition for certiorari may, prior to filing the case in this court request the clerk of the court possessed of the record to certify it or any part of it and to provide for its transmission to this court.

It was officially requested of Clerk of Court of Appeals via United States Express Mail on April 15, 1980 (eleven days ago with extra high fee of $7.65 paid for guaranteed next day delivery) that he certify and provide for immedi-

ate transmission of all thirteen items recorded in this case since October 26, 1979 — including ALL of the documents detailed above.

QUESTION

We humbly and honestly petition the Supreme Court of the United States to exercise its power of supervision over all courts by issuing a specific writ in *this case*:

> **"Remanding this case back to United States Court of Appeals for the District of Columbia Circuit, *en banc*, directing them to fulfill their own judicial roles and render (openly recorded) rulings on *all questions* so fairly presented by appellants."**
>
> (As detailed specifically in two motions dated December 26, 1979 (Appendix B and C) and pursuant to fulfilling Court Order filed January 15, 1980 (Appendix D) these documents are included among the thirteen documents petitioners have asked Clerk of Appeals Court to certify and transmit to Supreme Court).

The Court of Appeals have at their command a full five year accumulation of the litigation in this case. They accepted our fees and docketed this case with the following request as specified in our "Notice to Appeal" filed June 27, 1977:

> "We are not concerned whether the courts rule for or against us. However, (since docket 3024-75 is destined to become another case history to be cited as binding on taxpayers for generations yet unborn) let the records show ALL of the facts with actual recognition and listing of the five questions posed by petitioners to be followed by the publication of OFFICIAL RULINGS of ALL of the TAX COURTS made and recorded in their own conscience."

Further from Brief of Appellants Dated February 9, 1979:

"We deliberately petitioned for our appeal before The District of Columbia Circuit of United States Appeals Court. We concede to our opposition the convenience of the superior legal battery of United States Justice Department and guidance from the top echelon of the Internal Revenue Service. We *challenge* them *to satisfy* this Honorable Court in their own best ways to justify the Internal Revenue actions we have questioned here. All we ask is that this Honorable Court recognize our testimony (complete herein) and then rule on all points in its own conscience (recording same — open to any and all in public scrutiny).

We hold the utmost respect for the nine jurists of the United States Court of Appeals. We still commend our case to their infinite wisdom. We can accept without question *any* combined, complete and openly recorded judgments made in their own conscience.

PETITIONERS STATEMENTS

We apologize to this Supreme Court for having been quickly denied use of our funds for even one attorney to represent us in contesting the Internal Revenue Service mishandling of this simple preliminary tax audit negotiation (*never an established* tax deficiency) and thus forcing us to conduct our case pro se. We acknowledge with thanks the privilege of representing ourselves and although we have been brushed aside (without official answers) by

IRS Representatives in Memphis

IRS District Office in Nashville

IRS Regional Office — Birmingham

IRS Appellate Div. in Birmingham

U.S. Tax Court in Birmingham

High Commissioner IRS — Washington

United States Justice Dept Washington

and now

United States Court of Appeals in Dis. of Columbia Cir. Washington

We are still confident that *eventually* the truths will out. Five and one half years of costly litigation with no results — all because everyone in authority has simply *"Passed The Buck."*

Now and pursuant to Rule 23 (Rules of Sup. Ct.):

"The statement of a question presented will be deemed to *include every subsidiary question fairly comprised therein."*

CONCLUSION

We grant this has been merely a synposis of our case. However, it is presented in the interest of brevity and to spare this Supreme Court of the United States (any additional burdens). We simply ask that our Petition for Writ of Certiorari to United States Court of Appeals for The District of Columbia Circuit be granted as outlined and requested. The Court of Appeals have all of the questions backed by information both pro and con plus the *wisdom to judge* if they only *will.*

Respectfully submitted this 26th day of April 1980 by

JOHN W. COLEBANK,
Petitioning pro-se for
John W. and Mary C. Colebank,
5865 Pebble Beach Ave.,
Memphis, Tennessee 38118.
Petitioners.

APPENDIX

The six items reprinted in this Appendix are the exact wording of the original documents. For verification — all six documents are included in the list of thirteen documents Petitioners have moved for Clerk of United States Court of Appeals to certify and transmit to Supreme Court of the United States.

APPENDIX A

(Officially stamped)

NOT TO BE PUBLISHED

JUDGMENT OF UNITED STATES COURT OF APPEALS filed December 17, 1979

JUDGMENT

This cause came on for consideration on the record on appeal from the United States Tax Court and briefs were filed herein by the parties. For the reasons stated in the attached memorandum,

It is ORDERED and ADJUDGED by this COURT that the TAX COURT appealed from in this cause is hereby affirmed.

It is FURTHER ORDERED and ADJUDGED By this COURT that the INTERNAL REVENUE SERVICE credit the appellants with payment of $500 toward their deficiency as of August 22, 1974 and recalculate interest charges to reflect that credit.

MEMORANDUM

Appellants, John W. and Mary C. Colebank, challenge a decision of the United States Tax Court declaring a deficiency in their 1972 income tax payments of $2,896.83. They claim, in effect, that Internal Revenue Service is bound by the terms of a compromise settlement offer, made in 1974, of $500 as payment in full of the IRS's Claims.

Upon receiving a preliminary audit statement from IRS on August 8, 1974 indicating a $2,896.83 deficiency in their 1972 income tax payments, the Colebanks promptly wrote to the IRS Regional Office in Nashville, Tennessee, denying any deficiency but offering to settle the dispute for $500. In accordance with regulations, 26 C.F.R. 301.7122-1(d) (1979) they enclosed with the offer a check for $500. The check was marked "1972 Tax Audit paid in full." By a letter dated September 24, 1974 the IRS rejected this offer, and suggested that the Colebanks arrange a conference with an IRS agent to discuss the matter.

On January 6, 1975 a statutory notice of deficiency was mailed to the Colebanks. On March 10, 1975 the Colebanks wrote to the IRS requesting that the notice of deficiency be withdrawn. When their request was rejected by the IRS, the Colebanks filed this suit in the Tax Court.

IRS regulations provide that: "An offer in compromise shall be considered accepted only when the proponent thereof is so notified in writing." 26 C.F.R./301.7122-1(d)(3) (1979). In this case the IRS did not accept the Colebanks offer in writing: indeed, the IRS explicitly rejected the offer in writing. We must hold, therefore, that the Tax Court was correct in finding that no binding compromise agreement existed between the Colebanks and the IRS.

IRS regulations also provide: "If an offer in compromise is withdrawn or rejected, the amount tendered with the offer * * * * shall be refunded without interest, unless the taxpayer has stated or agreed that the amount tendered may be applied to the liability with respect to which the offer was submitted." The IRS violated this regulation when it failed to return the Colebanks' $500 payment when rejecting their offer. It compounded this violation by failing even to offer to return the money until March 13, 1975, nearly seven months after receiving the Colebanks' check. Despite this breach by the IRS of its own regulations, and in the absence of a written acceptance by the IRS, no agreement was created that could be enforced by this court.

Although the tax deficiency upheld by the Tax Court must be affirmed, the IRS must credit the Colebanks with payment of $500 towards that deficiency as of August 22, 1974. Interest charges must be recalculated to reflect that credit. The order of the Tax Court is

Affirmed.

APPENDIX B

APPELLANTS MOTION TO COURT OF APPEALS TO SET-ASIDE THEIR JUDGMENT ENTERED IN THIS CASE ON DECEMBER 17, 1979 AND RENDER INSTEAD AN ALL-ENCOMPASSING FINAL JUDGMENT

Nearly three years ago we filed "Notice of Appeal" to this Honorable Court. (Excerpt therefrom):

> "We are not concerned whether the COURTS rule for or against us. However, (since docket 3024-75 is destined to become another case history to be cited as binding on taxpayers for generations even yet unborn) let the records show all of the facts with actual

recognition and *listing* of the *five questions* posed by petitioners to be followed by the *publication* of OFFICIAL rulings of *ALL* of the TAX COURTS made and recorded in their own conscience."

We hasten to again advise this Honorable Court that we are still unconcerned whether you rule for or against us — only that you rule on *all* points of *LAW* — with absolutely no cover-ups. It is inconceivable to us (as mere law abiding taxpayers) that such an austere body (as SUPREME JURISTS for OUR UNITED STATES COURT OF APPEALS) in all of their infinite WISDOM could or would openly refuse to rule conclusively on ALL POINTS (already presented in Court ordered briefs).

This Court has rejected a most wonderful opportunity to end forever the confusion that has been allowed to exist and compound itself (so needlessly) now nearly five and one half years.

The same five questions we (as appellants) posed during a brief span from August 8, 1974 through September 24, 1974 remain unanswered and NOW completely ignored by this Honorable Court. This Court apparently prefers to rely instead on their recorded, binding and questionable selective rulings as filed December 17, 1979. We are surprised, but indeed pleased, that said judgment was officially marked *"not to be published"*. This gives us reason to believe this Court has reasonable DOUBTS in their own rulings and will honestly REVIEW their JUDGMENTS before some public reporter actually obtains a copy as they did of the questionable Tax Court findings and decision on February 24, 1976.

Accompanying this motion (for set-aside of judgment) is a petition by Appellants for REVIEW (Rehearing — as pursuant to Rule 40) relying upon detailed information presented therein along with specific listing of the five UNRESOLVED QUESTIONS.

Immediate granting of this motion is humbly requested as it is respectfully submitted on this 26th Day of December 1979 by

JOHN W. COLEBANK PRO-SE
for John W. and Mary C. Colebank
5865 Pebble Beach Ave.,
Memphis, Tennesse.

APPENDIX C

PETITION FOR REVIEW (JUDGMENT DATED 12/17/79)

PRELIMINARY STATEMENTS

Pursuant to Rule 40:

> "A petition for rehearing may be filed within 14 days after entry of judgment. The petition shall state with particularity the points of LAW or Fact which in the opinion of the petitioner the COURT has overlooked or misapprehended and shall contain such argument in support of the petition as petitioner desires to present."

John W. and Mary C. Colebank herein petition this Court for REVIEW of judgment entered in this case on December 17, 1979 — basing our petition upon points of LAW and FACT *overlooked* by this COURT.

This Honorable Court has elected to issue their judgment in this case upon the assumption the IRS had a *legitimate* "Tax Deficiency" ignoring completely that our case is the mishandling of a simple tax audit determination (subject to continued peaceful negotiation as instigated by IRS themselves) and *NOTHING MORE*.

Yes, this oversight (or outright refusal to rule on such a condition) can be officially ignored (as it was in this

questioned judgment) but such an omission or cover-up will NEVER solve anything. The situation that has been allowed to exist for over five years (purely for lack of official rulings at any level and now ignored by this COURT) still remains exactly the same as it was back on September 24, 1974.

In the *ABSENCE OF OFFICIAL RULINGS* to justify actions of IRS Representatives during August 8, 1974 and September 24, 1974 (more than three months *BEFORE* TAX DEFICIENCY was ever issued) this COURT has *NO JUSTIFICATION* to even consider that IRS has a *legitimate Tax Deficiency* in this CASE.

Presentation of Facts

Herein the five unanswered questions are developed and listed specifically — hopefully — for final rulings of this Honorable Court (openly recording same, backed by unquestionable substantiation) in the conscience of THIS COURT. Excerpt from Appeals Court Judgment:

> "Appellants', John W. and Mary Colebank, challenge a decision of the U.S. TAX COURT declaring a deficiency in their 1972 Income tax payments of $2,896.83. They claim, in effect, that IRS is bound by the terms of a compromise settlement offer made in 1974, of $500 as payment in full of the IRS Claims (Presented in lieu of hiring an attorney to prolong the case).
>
> Upon receiving a preliminary audit statement from IRS on August 8, 1974 indicating a $2,896.83 deficiency, the Colebanks promptly wrote to the IRS Regional Office in Nashville, Tennessee, denying any deficiency but offering to settle the dispute for $500 (with three part compromise package). In accordance with regulations they enclosed with (three part compromise offer) a check for $500. (in lieu of hiring an attorney). The check was marked "1972 TAX AUDIT (not deficiency) paid in full".

We humbly and honestly beg this Honorable Court to restudy the above reproduction in light of the corrective

(omissions by this Court) emphasis we have added (in parenthesis) to complete context of the memorandum.

The following reproductions are for the convenient considerations by this Court of specific references which follow immediately:

Letter August 8, 1974 from IRS

> "Enclosed are two copies of our report explaining why we believe adjustments should be made in the amount of your tax. Please look this report over and let us know *whether* you agree with out findings.
>
> If you do NOT accept our findings, you have 15 days from this date to:
>
> Mail us any additional evidence or information you would like us to consider.
>
> James A. O'Hara
> District Director"

Another reproduction (Brief of Appellant):

Section 7122 of the Internal Revenue Code provides that the Secretary of the Treasury or his delegate may compromise any civil case arising under the internal revenue laws. Offers in compromise must be submitted in writing and generally must be accompanied by a remittance representing the amount of the compromise offer."

Please refer periodically to the above reproductions: In the beginning CODE 7122 specifically states that U.S. Treasury Delegate CAN compromise ANY CIVIL CASE arising under IRS LAWS. There is nothing libelous nor criminal about our case as it is purely civil and simple. The treasury delegate (identified above as Hon. James A. O'Hara) wrote on August 8, 1974 — "Let us know WHETHER you agree with our findings — if you do NOT accept our findings — mail us any evidence or any information you would like for us to *consider*.

We did not write the rules nor directions but we did follow them. There is no need for further elaboration as these reproductions plus the THREE PART COMPROMISE PACKAGE (fully described and reproduced in BRIEF of APPELLANTS and Appendix pages 8-9 & 10) are all before this COURT. Please bear in mind all of this was over three months *BEFORE* the QUESTIONABLE TAX DEFICIENCY was EVEN ISSUED.

Unanswered question #1:

> Was appellants three part compromise package, backed by check (with binding conditions written on all three parts of compromise) a *legitimate compromise offer?*

Unanswered question #2:

> In light of reproductions on previous pages, HOW CAN ANYONE JUSTIFY THE ACTIONS OF IRS IN BREAKING A THREE-PART COMPROMISE PACKAGE (without hesitation nor explanation) LIFT AN ATTACHED CHECK, NEGOTIATE SAME AND *DISREGARD* THEIR OWN OFFER TO *CONSIDER (not TAKE) OUR COMPROMISE?*

Never once (in over five years of turmoil) has anyone at any level cited us of any regulation or case history based on handling of questionable TAX AUDIT Determinations still under peaceful negotiations. Let this become a *first-ever-test — case* based solely on the handling of a TAX AUDIT DETERMINATION still under consideration. This becomes NOW a most wonderful opportunity for this COURT to render a *NEW LAND-MARK DECISION* of their OWN.

> COLEBANKS v. Comm. INT. REV. TAX AUDIT DETERMINATIONS 1979.

Just *Let the records show both sides of everything.*

On page 7 (brief of Appellants) is a detailed presentation of United States Treasury Social Security check bearing

specific notation written thereon. We were following official EXAMPLE they set for us. Their limitations and notations are definitely binding.

Unanswered question #3:

> Do we have the same right to expect same consideration from United States Treasury, if they actually accept and negotiate our check in direct violation of clearly declared limitations thereon?

(Before ruling, please bear in mind this is a civil case involving peaceful negotiations.

On the next page is a detailed presentation relative to the reproduction of advice from PROGRESSIVE FARMER — national publication — actually the "Hand Bible" for ALL Farmers and LIVESTOCK Men the last fifty years. They are so recognized as authorities on all subjects that United States Internal Revenue Men recognize their subscriptions as tax deductible. TAX COURT (see trial procedures Brief of Appellants Appendix Page 12) list full considerations of ALL PAPERS AND DOCUMENTS SUPPORTING OUR CLAIMS.

Unanswered question #4:

> Are we denied the advice and guidance of experts in our profession when our advisors present such credentials as federal backing for their advice?

We reproduce from Court of Appeals Judgment rendered December 17, 1979 — page 2 (Appendix A):

> "shall be refunded without interest, unless the taxpayer has stated or agreed that the amount tendered may be applied to the liability with respect to which the offer was submitted. The IRS violated this regulation when it failed to return the Colebanks' $500 payment when rejecting their offer. It compounded this violation by failing even to offer to return the money until March 13, 1975, nearly seven months after receiving the Colebanks' check. Despite this breach by IRS of its own regulations, we must

> rule against the taxpayers in this case. Creation of a binding compromise agreement is strictly governed by the regulations, and in the absence of a written acceptance by IRS, no agreement was created that could be enforced by this COURT".

We note the IRS violations listed by this Honorable Court, but we humbly beg to disagree with the *selective* and *questionable summation* of this COURT that there is an *absence* of a *written acceptance by IRS*. We reproduce a copy of the wording printed in BOLD BLUE on form 1902-E that was a part of three-part compromise package submitted to District Director of IRS on August 19, 1974 (presented in full in Brief of Appellants — Appendix pages 8-9 & 10).

> "This is your *written notice* that your case is *closed* if you are *not* notified of an exception — within 30 days after a signed copy — is received by District Director."

Please note we signed the report (with added limitations of compromise) making it an official document on August 19, 1974. This in direct reply to said Director's request for us to MAIL any information we wished him to consider. He negotiated our check without hesitation and without explanation. He *reserved for himself* 30 days to file an exception or until September 21, 1974. THIS CASE WAS *CLOSED OFFICIALLY and LEGALLY* at the close of business on September 21, 1974.

Ours was not a selected case as the same *written* notice was printed in BOLD BLUE on ALL forms 1902-E for the convenience of the District Director and his staff. It was printed in bold blue so as to not go un-noticed. Ironically, and for the information of this COURT — *now* form 1902-B and used by IRS *nowdays* still list their notice in Bold Blue but (since their hand was called in THIS CASE five years ago) the word *written* notice which *applied in our case* has NOW *been deleted.*

This COURT has already acknowledged that our three-part package conveying the check was received by District

Director on August 22, 1974 and that he did *not* write us a rejection until September 24, 1974 — a *full three days after* their *own written Notice* that *OUR CASE was CLOSED.*

For more than five years now

District Director IRS (Nashville)

Regional Director (Birmingham)

Appellate Division (Birmingham)

United States Tax Court (Birmingham)

High Comm. of IRS (Washington)

United States Justice Dept (Washington)

and NOW

United States Court of Appeals (Wash.)

have all refused to accept my challenge to them to justify the actions of Internal Revenue Servicemen during the brief period from August 8, 1974 and September 24, 1974. Even after five years of litigation *NOTHING* has changed.

Unanswered question #5:

> In face of the proof (in our files) and in further light of proof herein presented, how can anyone *deny* that our case was closed officially and legally on September 21, 1974?

In Summary

We reproduce our statement from Brief of Appellants page 2:

> "We deliberately petitioned for our appeal before the District of Columbia Circuit of United States Court of Appeals. We concede to our opposition the convenience of the superior legal battery of United States Justice Department and guidance from the top echelon of IRS. We challenge them to satisfy this Honorable COURT in their own best ways to justify the IRS actions we have questioned herein".

Counsel for Appellee *refused* to accept our challenge for them to justify the IRS actions three months before a Tax Deficiency was *illegally* entered. ABSOLUTELY NOTHING has changed since September 24, 1974.

We ask this Honorable Court to end forever litigation in this case by ruling on *ALL POINTS* IN YOUR OWN CONSCIENCE in ONE UNQUESTIONABLE FINAL JUDGMENT.

Respectfully submitted for REVIEW on this 26th day of December 1979 by

JOHN W. COLEBANK,
pro-se for John W. & Mary C. Colebank,
5865 Pebble Beach Ave.,
Memphis, Tennessee 38118, Petitioners.

APPENDIX D

COURT ORDER FILED JANUARY 15, 1980

UNITED STATES COURT OF APPEALS (D.C. DIR.)

Before: WRIGHT, Chief Judge; ROBB, Circuit Judge and CORCORAN, Judge U.S. Dis. Court.

ORDER

Upon consideration of appellants' (Colebank) *pro-se* motion "to set aside (this Court's) judgment entered in this case on December 17, 1979 and render instead an all-encompassing final judgment, and of appellants' *pro-se* "petition for review" of judgment entered December 17, 1979, and the aforementioned pleadings have been construed as a petition for rehearing and/or suggestion for rehearing *en banc*, it is

ORDERED, by the Court, that the clerk is directed to file appellants' aforesaid pleadings, construed as a petition

for rehearing and/or suggestion for rehearing *en banc*, and to note the docket accordingly. And it is

FURTHER ORDERED, that the Clerk is directed to transmit appellants' petition for rehearing and/or suggestion for rehearing *en banc* to the Court for its consideration.

Per Curiam

GEORGE A. FISHER,
Clerk.

APPENDIX E

COURT ORDER FILED JANUARY 28, 1980

UNITED STATES COURT OF APPEALS (D.C. Cir.)

BEFORE: Wright, Chief Judge, McGowan, Tamm, Robinson, Wilkey, Wald, MacKinnon, Robb and Mikva, Circuit Judges.

ORDER

The suggestion for rehearing *en banc* filed by appellants (Colebank) having been transmitted to the full court and no judge in regular active service having requested a vote with respect thereto, it is

ORDERED, by the Court, *en banc*, that Appellants' aforesaid suggestion for rehearing *en banc* is denied.

Per Curiam

GEORGE A. FISHER,
Clerk.

APPENDIX F

COURT ORDER FILED JANUARY 28, 1980

UNITED STATES COURT OF APPEALS (D.C. Cir.)

Before: WRIGHT, Chief Judge, ROBB, Circuit Judge and CORCORAN Dis. Judge.

ORDER

Upon consideration of appellants' (Colebank) petition for rehearing, it is

ORDERED, BY THE COURT, that appellants' aforesaid petition for rehearing is denied.

Per Curiam

GEORGE A. FISHER,
Clerk.

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

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In the Supreme Court of the United States

OCTOBER TERM, 1979

JOHN W. AND MARY C. COLEBANK,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF AUTHORITIES

Page

Cases:

Botany Worsted Mills v. *United States*, 278 U.S. 282 3

Bowling v. *United States*, 32 A.F.T.R. 2d, para. 73-5277, aff'd, 510 F. 2d 112 4

Brubaker v. *United States*, 342 F. 2d 655 3

Country Gas Service, Inc. v. *United States*, 405 F. 2d 147 3

Green v. *Commissioner*, 26 B.T.A. 719, appeal dismissed, 75 F. 2d 1014 4

Hughson v. *United States*, 59 F. 2d 17, cert. denied, 287 U.S. 630 4

Johnston v. *Commissioner*, 19 B.T.A 630 4

Moskowitz v. *United States*, 285 F. 2d 451 4

Parks v. *Commissioner*, 33 T.C. 298 4

Rountree v. *Commissioner*, 456 F. 2d 1110 4

Royal Indemnity Co. v. *United States*, 313 U.S. 289 3

Scharton v. *Commissioner*, 32 B.T.A. 459 4

Page

Statute:

Internal Revenue Code of 1954 (26 U.S.C.):

Section 6212(a) 2

Section 7122 3

Miscellaneous:

Treasury Regulations on Procedure and Administration (26 C.F.R.):

Section 301.7122-1(d)(1) 3

Section 301.7122-1(d)(3) 3

Section 301.7122-1(d)(4) 4

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 80-306

JOHN W. AND MARY C. COLEBANK,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The question presented in this federal income tax case is whether the decision below correctly held that negotiation by the Internal Revenue Service of a check submitted by petitioners with an offer in compromise of their income tax liability was not a binding acceptance of the offer.

The pertinent facts may be summarized as follows: After an audit of petitioners' 1972 federal income tax return, the Internal Revenue Service determined a liability of $2,896.83. Upon their receipt of a preliminary audit statement indicating a deficiency, petitioners promptly wrote to the Internal Revenue Service denying that they owed additional taxes, but offering to settle the dispute

for $500. A check for $500, marked "1972 Tax Audit paid in full," was enclosed (Pet. App. 2a).

Petitioners' check was negotiated by the Internal Revenue Service and credited to their account on August 22, 1974, in accordance with established procedure. *Colebank* v. *Commissioner*, 36 T.C.M. 200, 201 (1977). By letter dated September 24, 1974, the Internal Revenue Service notified petitioners that their settlement proposal was unacceptable and that their check had been applied as a deposit against their liability pending final settlement of the dispute. Petitioners were also advised to arrange a settlement conference with the Internal Revenue Service (Pet. App. 2a).

On January 6, 1975, the Internal Revenue Service mailed to petitioners a statutory notice of deficiency in accordance with Section 6212(a) of the Code. By letter dated March 10, 1975, petitioners requested that the statutory notice be withdrawn on the ground that the liability had been paid (Pet. App. 2a). The Internal Revenue Service responded on March 13, 1975, by explaining that negotiation of petitioners' check did not constitute an acceptance of their offer in compromise, and the Internal Revenue Service offered to return the $500 that had been credited to petitioners' account. Petitioners declined the Internal Revenue Service's offer to return the money. *Colebank* v. *Commissioner*, *supra*, 36 T.C.M. at 201.

In this action brought by petitioners in the Tax Court, petitioners did not contest the correctness of the deficiency. Their sole argument was that the Internal Revenue Service's negotiation of the check submitted with their offer constituted a binding settlement agreement. The Tax Court held that negotiation of petitioners' check

did not constitute an acceptance of their offer, and the court of appeals affirmed (Pet. App. 2a-3a).

1. The decision below correctly held that negotiation of petitioners' check by the Internal Revenue Service did not constitute a binding acceptance of petitioners' offer to compromise their federal income tax liability. Section 7122 of the Internal Revenue Code of 1954 (26 U.S.C.) provides that the Secretary of the Treasury or his delegate may compromise any civil case arising under the internal revenue laws. Offers in compromise must be submitted in writing and generally must be accompanied by a remittance representing the amount of the offer. Treasury Regulations on Procedure and Administration, Section 301.7122-1(d)(1) (26 C.F.R.). An offer in compromise is accepted only when the taxpayer is notified in writing. Treasury Regulations on Procedure and Administration, Section 301.7122-1(d)(3). The settlement of a disputed federal income tax claim is not binding unless there is rigid adherence to these requirements. *Royal Indemnity Co.* v. *United States*, 313 U.S. 289, 294-295 (1941); *Botany Worsted Mills* v. *United States*, 278 U.S. 282 (1929); *Country Gas Service, Inc.* v. *United States*, 405 F. 2d 147, 149-150 (1st Cir. 1969); *Brubaker* v. *United States*, 342 F. 2d 655, 662 (7th Cir. 1965).

The Internal Revenue Service fully complied with its established procedure in rejecting petitioners' offer in compromise. The check submitted with the offer was negotiated and credited to petitioners' account pending formal action on the offer. Petitioners were advised in writing when the offer was rejected. After petitioners failed to arrange a conference with the Internal Revenue Service to discuss the dispute, the Internal Revenue Service offered to return the payment. Petitioners declined the offer to return the $500 and the payment was

applied against their tax liability. *Colebank*, *supra*, 36 T.C.M. at 201.[1]

2. The courts below also properly rejected petitioners' common law accord and satisfaction argument. It is well established that the negotiation of a check submitted with a taxpayer's offer in compromise does not constitute an acceptance of that offer by the Internal Revenue Service because the above-cited requirements (which were not satisfied here) provide the exclusive method to compromise tax liabilities. *Rountree* v. *Commissioner*, 456 F. 2d 1110, 1111 (6th Cir. 1972); *Moskowitz* v. *United States*, 285 F. 2d 451, 453 (Ct. Cl. 1961); *Hughson* v. *United States*, 59 F. 2d 17, 19 (9th Cir.), cert. denied, 287 U.S. 630 (1932); *Bowling* v. *United States*, 32 A.F.T.R. 2d para. 73-5277, 5902 (N.D Tex. 1973), aff'd, 510 F. 2d 112 (5th Cir. 1975); *Parks* v. *Commissioner*, 33 T.C. 298, 302 (1959); *Scharton* v. *Commissioner*, 32 B.T.A. 459, 464 (1935); *Green* v. *Commissioner*, 26 B.T.A. 719, 726 (1932), appeal dismissed, 75 F. 2d 1014 (9th Cir. 1935); *Johnston* v. *Commissioner*, 19 B.T.A. 630 (1930).

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[1]Section 301.7122-1(d)(4) of the Treasury Regulations on Procedure and Administration provides that if an offer is rejected "the amount tendered with the offer * * * shall be refunded without interest," unless the taxpayer has agreed that the amount tendered may be applied to the liability with respect to which the offer was submitted. The Internal Revenue Service offered to return the payment made by petitioners, but they declined the offer. The court of appeals determined that the Internal Revenue Service's offer to return the payment was not timely, since it was made after petitioners' settlement offer was rejected (Pet. App. 3a). The court of appeals correctly held, however, that even if it is assumed that the Internal Revenue Service's attempt to return the payment was untimely, there is still no enforceable agreement (Pet. App. 3a).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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